

Before the  
Federal Communications Commission  
Washington, D.C. 20554

IN THE MATTER OF )  
 ) WC Docket No. 02-60  
Rural Health Care Support Mechanism )

USTelecom Petition for Reconsideration

**Comments of the Montana Telecommunications Association**

The Montana Telecommunications Association (MTA) is pleased to have the opportunity to respond to the Wireline Competition Bureau's request for comments<sup>1</sup> on USTelecom's Petition for Reconsideration and Clarification<sup>2</sup> of the Healthcare Connect Fund Order.<sup>3</sup> MTA has filed numerous comments in this proceeding expressing serious legal and policy concerns with regard to the infrastructure funding component of the Rural Health Care Mechanism.<sup>4</sup>

A common theme running throughout MTA's comments has been that the Telecommunications Act of 1996 does not authorize the use of rural health care universal service funds for the construction or sale of telecommunications network facilities by health care providers.<sup>5</sup> The American Telemedicine Association has called infrastructure funding under the Rural Health Care

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on United States Telecom Association Petition for Reconsideration and Clarification of the Healthcare Connect Fund Order*. WC Docket No. 02-60, DA 13-864. (Rel. April 24, 2013).

<sup>2</sup> *USTelecom Association Petition for Reconsideration and Clarification*. WC Docket No. 02-60 (filed April 1, 2013).

<sup>3</sup> Rural Health Care Support Mechanism. WC Docket No. 02-60, FCC 12-150. Report and Order. (Rel. December 21, 2012).

<sup>4</sup> See In the Matter of Health Care Support Mechanism, WC Docket No. 02-60: ex parte comments of the Montana Telecommunications Association: April 29, 2009; October 28, 2010; January 30, 2011; April 26, 2012; November 5, 2012 and April 29, 2013; and Comments of the Montana Telecommunications Association: January 11, 2010; September 10, 2012; September 23, 2010; February 18, 2011; April 18, 2012 and August 23, 2012.

<sup>5</sup> 47 U.S.C. §254 (h).

Mechanism “*ill-advised*.”<sup>6</sup> USTelecom, in its Petition for Reconsideration, refers to the Commission’s encouragement of installation of excess capacity as “*speculative*.”<sup>7</sup> In either event, the Commission’s endorsement of infrastructure construction under the Rural Health Care Mechanism has invited troubling questions regarding both commission authority and the merits of such a policy.

MTA continues to assert that the Act does not authorize the use of Rural Health Care Mechanism funds for *any* infrastructure construction by health care providers. Among other reasons, using Rural Health Care funds to build infrastructure which could compete with existing infrastructure funded in part by the High Cost mechanism potentially pits one universal service program against another, resulting in a waste of precious universal service funds.

USTelecom raises concerns particularly about the Commission’s support for the sale of excess capacity and dark fiber. MTA fully supports USTelecom’s Petition for Reconsideration. As USTelecom states, “The Commission cannot save its unlawful ‘cost-sharing’ rule by attempting to create some distinction between ‘cost-sharing’ and resale.”<sup>8</sup> The Act specifically prohibits the sale, resale or other transfer “in consideration for money or any other thing of value.”<sup>9</sup> MTA fails to see how the construction and sale of excess capacity, the proceeds from which may be used by health care providers to “sustain” their network operations, are not prohibited activities under the law. As USTelecom notes, the law “does not create a carve-out for [health care providers] that use the payments from reselling network capacity to others in a certain manner or for [health care providers] that charge a certain amount for their excess network capacity.”<sup>10</sup>

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<sup>6</sup> *In the Matter of Notice of Proposed Rulemaking Regarding the Universal Service Support Mechanism for Rural Healthcare*. WC Docket No. 02-60. Comments of the American Telemedicine Association. (September 6, 2010).

<sup>7</sup> *USTelecom Petition*. *Id.*, p.2

<sup>8</sup> *Id.*, p.3.

<sup>9</sup> 47 U.S.C. §254(h)(3).

<sup>10</sup> *Id.* pp 3-4.



USTelecom mentions a variety of policy reasons for reconsidering the Commission's support for allowing health care providers to construct their own networks and resell excess capacity. For example, "there is no defensible rationale for today's Universal Service Fund to support overbuilders where private capital is already providing broadband capacity." Indeed, as MTA has mentioned in previous comments, the construction of duplicative network capacity using universal service Rural Health Care funds—particularly when such construction is aimed at removing large-user anchor institutions from existing networks—can discourage further investment in High-Cost Fund-supported network infrastructure. By siphoning away anchor institutions from the public network, high-cost telecom providers have less to invest in their networks and to serve their hardest-to-serve consumers. Moreover, by allowing rural health care providers first to remove themselves from the public network and then to sell excess capacity to even more anchor institutions, this disinvestment problem is exacerbated. As USTelecom points out, removal of anchor institutions such as health care providers from networks already supported in part by the High Cost Fund conflicts with the *USF/ICC Transformation Order's* policy of targeting support to one provider per geographic area.<sup>11</sup>

USTelecom further urges the Commission to reconsider its "dark fiber" policy:

Dark fiber is not eligible for support under section 254(h)(1)(A) or (h)(2)(A) of the Act as it is neither a telecommunications service, advanced telecommunications service nor an information service. It is merely a facility...<sup>12</sup>

In conclusion, MTA maintains that the Act does not authorize the use of Rural Health Care mechanism funds for the construction of network facilities,

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<sup>11</sup> *Id.* p.4.

<sup>12</sup> *Id.* p.5.



including dark fiber, or for the sale, resale or other transfer of such facilities.  
Thus, MTA supports USTelecom's Petition and urges the Commission to  
reconsider the excess capacity and dark fiber provisions in its Healthcare  
Connect Fund Order.

Respectfully submitted,

/s/

Geoffrey A. Feiss, General Manager  
Montana Telecommunications Association  
208 North Montana Ave., Suite 105  
Helena, MT 59601  
406-442-4316  
[gfeiss@telecomassn.org](mailto:gfeiss@telecomassn.org)

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